

**CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)**

Applicant(s): Ellul, et al.

Docket No.

9427C

Application No.

08/780,507

Filing Date

1/8/1997

Examiner

Marie L. Reddick

Group Art Unit

1713

Invention: TRANSLUCENT THERMOPLASTIC POLYMERS

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: ) Group Art Unit 1713  
Ellul, et al )  
Serial No.: 08/780,507 )  
Filed: 01/08/1997 ) Examiner: Marie L. Reddick  
TITLE: TRANSLUCENT THERMOPLASTIC POLYMERS

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Date: February 04, 2004

Assistant Commissioner for Patents  
Washington, D.C. 20231

**AMENDMENT AND RESPONSE UNDER 37 CFR 1.111**

Sir:

On behalf of the applicants, I am filing this reply to the Office communication mailed 10/14/2003. That communication set a shortened period for reply of 3 months. The Applicants request an extension under 37 C.F.R. 1.136(a) to allow this late filing. Please credit payment for the fee for this extension from Account # 010275 as is authorized by the signature below.

**IN THE CLAIMS:**

Please amend claims 20 -22 as rewritten below. No other amendments are to be made at this time, particularly to claims 23 and 24 which claims remain unchanged.

20. (amended) An optically translucent thermoplastic elastomer comprising
- (A) 10 to 90 weight percent, based upon the weight of the rubber and polypropylene, of propylene homopolymer principally containing propylene units of exactly alternating configuration and having a syndiotactic pentad fraction of at least 0.86, and
  - (B) 90 to 10 weight percent, based upon the weight of the rubber and polypropylene, of an ethylene-propylene-nonconjugated diene terpolymer rubber and/or

an ethylene-propylene copolymer rubber, said component (B) having an ethylene content of at least 74 wt% and having been completely crosslinked.

21. (amended) The thermoplastic elastomer of claim 1 wherein component (A) has a density of 0.89 to 0.91 g/cm<sup>3</sup> and a melting point of 135°C to 140°C.

22. (amended) The thermoplastic elastomer of claim 1 wherein component (B) is an ethylene-propylene-diene terpolymer having an ethylene content between 74 wt% and 77 wt%.

The changes in the above claims from those previously pending are provided in the marked-up form attached hereto to effect this amendment in accordance with MPEP 714.22 (c) (1) (ii). Those markings use ~~strike-through~~ indications to show deletions and underlined indications to show additions.

#### DISCUSSION:

The amendments to be entered pursuant to the request above are supported in the original text and as such are not believed to introduce any new matter. The change with respect to the weight percentages in claim 20 are based on the description at page 4, lines 7-9 and at page 5, lines 2-3. The % ethylene contents of claims 20 and 22 are changed to wt.% as clearly expressed and set out in the description in Table II, Examples "F" and "G" in the Table column heading "Wt.% C<sub>2</sub>". The amended definition of the syndiotactic polypropylene preferred for the invention of claim 21 is from the description at page 5, lines 1-2.

The applicants traverse the rejection under 35 U.S.C. 112, first paragraph, in paragraphs 3 and 4 of the Office Communication. As noted in the preceding paragraph, Table II clearly conveys to one skilled in the art that the haze values relating to the translucent compositions claimed have optimal values when the Wt.% C<sub>2</sub> is at or above 74 wt.% ethylene. The paragraph below Table II explains the phenomena illustrated in this showing to further emphasize this teaching for one skilled in the art. Table II shows

steady improvement of % Haze with ethylene content, those values being optimized at the highest values thereof.

The applicants request reconsideration of the rejection of claims 20 and 22 under 35 U.S.C. 112, second paragraph, in paragraphs 5 A) and B) of the Office Communication in view of the amendments requested. The changes directly address the lack of clarity noted by the examiner, and should suffice to overcome those concerns.

The applicants also request reconsideration of the rejection of claim 21 under 35 U.S.C. 112, second paragraph, in paragraphs 5 C) of the Office Communication in view of the amendments requested. The references to product names, whether trademarked or not, have been deleted. The chemical property limitations of those products, from the description as noted above, are substituted and would appear to overcome the stated reasons for rejection.

The applicants further request reconsideration of the rejection of amended claims 20 - 24 under 35 U.S.C. 103 (a) in paragraphs 5 -9 of the Office Communication in view of the clarification amendments requested and the following argument. I submit that an improper conclusion under the "prima facie obviousness" criteria of USPTO practice is being rendered where the data of the application provides the empirical showing of a surprising effect, or "synergistic" effect, as noted by the applicants. In Table II the applicants have shown that the Masuda disclosure of run 5 at 73 wt.% ethylene content would inherently provide performance at a level between that measured at 72 wt.% ethylene (example "E") and 74 wt.% ethylene (example "F"). An arithmetic average between the two for haze value (%) would be about 58 and is clearly well above that of 48 for the claimed level from Example F, 74 wt.% ethylene content. It should therefore be irrelevant that the USPTO has no testing facilities to show what has been illustrated in the application as filed.

I would also note that the Masuda application does present the teaching to one skilled in the art that would clearly discourage him from practicing the invention of Masuda at the highest level of crosslinking. Though such is mentioned, that teaching may be of value for rejection only where specifically showing a composition within the

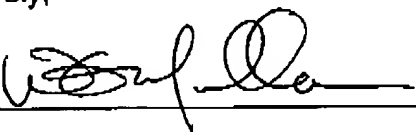
later claimed scope. However, where not shown to have been practiced, because of undisclosed testing results, or simply prejudice, one skilled in the art would not have any incentive to practice at that level. This is not an incidental overlap in a comparison example, but is instead a positive recitation discouraging any overlap.

Lastly, Masuda does not address in any identified manner the objective of achieving translucent compositions, and is directed to entirely different objectives. Puydak does not correct that misdirection but contributes an entirely different one. Where neither reference addresses the objectives of the claimed invention, it becomes even more apparent that there is no proper "prima facie obviousness" of it for one skilled in the relevant art.

#### CONCLUSION:

I submit that all reasons for rejection have been suitably addressed by this reply, and that reconsideration of those reasons is appropriate. I request that the outstanding rejections be withdrawn and that a Notice of Allowance be provided in due course unless alternative reasons for rejection are identified. If the Examiner has any further questions or concerns, he is invited to call the undersigned, authorized representative of the applicants.

Sincerely,



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Attachment: Complete Listing of the Claims